

IBLA 85-258

Decided April 30, 1986

Appeal from a decision of the Anchorage, Alaska District Office, Bureau of Land Management, declaring placer mining claim null and void ab initio. AA-36177.

Affirmed.

1. Alaska: Land Grants and Selections -- Alaska: Statehood Act --
Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land
-- Withdrawals and Reservations: State Selections

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriation, including location under the mining law. A mining claim located on land segregated and closed to mineral entry is properly declared null and void ab initio.

APPEARANCES: Perlina J. Strassburg for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Perlina J. Strassburg and Wilford D. Strassburg have appealed from a decision of the Anchorage, Alaska District Office, Bureau of Land Management (BLM), dated November 21, 1984, declaring the Sheri No. 2 placer mining claim, AA-36177, null and void ab initio.

Appellants' mining claim was located September 22, 1975, in sec. 15, T. 28 N., R. 9 W., Seward Meridian, Alaska, 1/ and filed in the Talkeetna Recording District on November 19, 1975. The claim was filed for recordation with BLM on October 22, 1979, pursuant to section 314(b) of the Federal

1/ It appears from the record that the township is unsurveyed except for certain mineral surveys. Although the copy of the notice of location in the case file does not identify the section, township, and range in which the claim is located, this information was subsequently provided by appellants in response to a BLM request.

Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982). In its November 1984 decision, BLM declared appellants' mining claim null and void ab initio because it was located at a time when the land was closed to mineral entry by virtue of state selection application AA-6909 filed January 21, 1972, pursuant to section 6(b) of the Act of July 7, 1958, P.L. 85-508, 72 Stat. 340 (1958), which segregated the land from location under the mining law in accordance with 43 CFR 2627.4(b).

In their statement of reasons for appeal, appellants contend they were informed at the time of filing their notice of location in 1975 with the local recording district that the land was not included in state selection application AA-6909. ^{2/} Appellants assert they have since performed assessment work each year and filed proof of labor for the claims without notice of any defect prior to the BLM decision.

[1] It is well established that the filing of a state selection application segregates the lands included therein from all subsequent appropriations, including location of claims under the mining laws, pursuant to 43 CFR 2091.6-4 and 2627.4(b), and that a mining claim located on such land at a time when it is closed to mineral entry is properly declared null and void ab initio. Thomas C. Bay, 87 IBLA 194 (1985); William Mrak, 86 IBLA 16 (1985).

The record indicates that, subject to prior valid rights and claims and excluding patented lands, state selection application AA-6909 encompasses all of T. 28 N., R. 9 W., Seward Meridian, Alaska. Accordingly, we conclude BLM properly declared appellants' mining claim null and void ab initio because it was located at a time when the land was closed to mineral entry.

Appellants, however, imply that they are entitled to the claim because they were told by BLM at the time the claim was filed for recordation that the land was not affected by state selection application AA-6909 and have been "allowed" to perform assessment work every year since that time. In essence, appellants contend that, by virtue of this reliance, BLM is estopped from declaring the claim null and void ab initio.

This argument must be rejected. It is well established that the failure of the Government to notify the owner upon his filing or recording a mining claim that the claim is located on lands not subject to location shall not preclude BLM from later declaring the claim void. 43 CFR 3833.5(f); David D. Beal, 90 IBLA 91, 94 (1985); Donly Gray, 82 IBLA 46, 47 n.3 (1984); William C. Reiman, 54 IBLA 103, 106 (1981). We note that reliance on erroneous information provided by a BLM employee cannot vest any rights not authorized by law. 43 CFR 1810.3(c); David D. Beal, *supra* at 94. Significantly, the fact of the state selection embracing the land was a matter of public

^{2/} Appellants state they were informed "in Palmer, and again in Anchorage, at the time of filing, November 19, 1975" that the land was not affected by state selection application AA-6909. The November 1975 "filing" to which appellants refer is the filing of the location notice with the Talkeetna Recording District Office. The claims were subsequently filed for recordation pursuant to FLPMA with BLM in Anchorage, Alaska, on Oct. 22, 1979.

record noted to the township plat which gave appellants constructive knowledge that this land was unavailable and hence there can be no estoppel. See David D. Beal, *supra* at 94; Celeste C. Grynberg, 74 IBLA 180 (1983).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant
Jr. Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge.

